

EXHIBIT 2

DEPOSITION OF OFFICER LLOYD McKEE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
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ROY NELSON III, Successor-
in-Interest to Decedent ROY
NELSON; ORENELL STEVENS,
individually,

Plaintiffs,

vs.

CASE NO.:
3:16-cv-7222

CITY OF HAYWARD, a municipal
corporation; MICHELLE HALL, in her
individual and official capacity
as Police Officer for the CITY OF
HAYWARD; NATHANAEL SHANNON, in his
individual and official capacity
as Police Officer for the CITY OF
HAYWARD; MATTHEW MCCREA, in his
individual and official capacity
as Police Sergeant for the CITY OF
HAYWARD; JOHN PADAVANA, in his
individual and official capacity
as Police Officer for the CITY OF
HAYWARD and DOES 1-50, inclusive,
individually and in their official
capacity as police officers for
the City of Hayward,

CERTIFIED COPY

Defendants.

_____ /

DEPOSITION OF OFFICER LLOYD McKEE

FRIDAY, APRIL 6, 2018

REPORTED BY: KELLY L. MCKISSACK, CSR #13430

DEPOSITION OF OFFICER LLOYD McKEE

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A P P E A R A N C E S

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EXHIBITS

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(No Exhibits Were Marked.)

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1 Pursuant to Notice of Taking Deposition, and
2 on Friday, April 6, 2018, commencing at the hour of
3 2:28 p.m., thereof, at 7677 Oakport Street, Suite 1120,
4 Oakland, California 94621, before me, KELLY MCKISSACK,
5 CSR No. 13430, a Certified Shorthand Reporter and
6 Deposition Officer of the State of California, there
7 personally appeared:

8
9 OFFICER LLOYD MCKEE,
10
11 called as a witness by the Plaintiffs, who having been
12 duly sworn by me, to tell the truth, the whole truth and
13 nothing but the truth, testified as hereinafter set
14 forth:

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1 OFFICER LLOYD MCKEE,
2 having been first duly sworn, testified as follows:

3 THE WITNESS: (TO OATH) Yes.

4 EXAMINATION

5 BY MS. NOLD: Q. Good afternoon. My name is Melissa
6 Nold. I'm an attorney for the family of Roy Nelson.

7 Could you please say and spell your first and
8 last name, please.

9 A. Lloyd McKee, L-L-O-Y-D, M-C-K-E-E.

10 Q. And today we're going to be talking about the
11 incident that occurred on December 19 of 2016 when
12 Mr. Roy Nelson passed away. Is that your understanding
13 of why you're here today?

14 A. Yes.

15 Q. And is it your understanding that you've been
16 named as one of the defendants related to the death of
17 Mr. Roy Nelson?

18 A. Yes.

19 Q. Okay. And what documents did you review to
20 prepare for your deposition today?

21 A. A transcript of my statement to the detectives
22 in the investigation. And then review of body cam
23 footage.

24 Q. And is that all?

25 A. And my attorney.

1 Q. Okay. And that's -- we'll talk about some
2 rules in a few minutes. We don't want you to discuss
3 anything that came as a result of conversations with
4 your attorney. I just mean like standalone documents
5 that you can identify or camera footage.

6 With the -- and I'll go back in a minute and
7 I'll go over some rules. I just want to go through this
8 first. Did you only read your own transcript from the
9 interview?

10 A. That's it.

11 Q. And did you watch any body camera footage
12 other than your own that you're aware of?

13 A. There was some body camera footage that I saw
14 that wasn't mine.

15 Q. Okay. Do you have an understanding of whose
16 camera footage it was?

17 A. I don't recall whose it was.

18 Q. Okay. And, obviously, it's facing forward.
19 You can't see the person. Sometimes people know for
20 whatever reason. That's fine that you don't.

21 Have you been deposed before previously?

22 A. Yes.

23 Q. Okay. About how many times?

24 A. Once. And it was for a traffic collision
25 between two parties.

1 Q. Okay. Well, I'll go over some rules and
2 hopefully make this a little bit easier and get you out
3 of here as soon as possible.

4 It's important that we make sure that all of
5 our responses are verbal. No nodding of the head,
6 shaking, anything that the court reporter would need to
7 either be watching you do or trying to have to
8 interpret. So no uh-huhs and huh-uhs. We try to be
9 clear and use words.

10 Also, we want to make sure that we're getting
11 the best testimony possible of what's available within
12 the scope of your memory. We would ask for your best
13 remembrance of any question. And if you don't recall,
14 it's fine to say I don't know. We don't want you to
15 speculate. We don't want you to guess. But we are
16 entitled to whatever portion of memory you do have.

17 So, for example, if you knew that it was
18 night, but you didn't know what time. We'd be entitled
19 to know that you know that it was night or it was dark
20 or something like that even though you might not know
21 that it was 8:45. Do you understand?

22 A. Right.

23 Q. Also, the testimony that you provide today is
24 being provided under oath. You were sworn in by the
25 court reporter. Even though there's not a judge present

1 here, we will be -- during the deposition your attorney
2 most likely will be putting forth some objections that
3 are being preserved for the record. In case we get to
4 the point of having trial in this case, at some point
5 there will be a judge who will actually rule on the
6 objections that are being made today.

7 So try to be patient as we go through the
8 process. I'll ask you questions. Your attorney after I
9 ask the question may jump in and say objection. But
10 unless he tells you otherwise, you still need to answer
11 the question. It will be pretty clear usually if you're
12 being directed not to answer the question.

13 There will also be a transcript prepared of
14 the testimony that's provided today. You'll get an
15 opportunity to review that transcript for accuracy. And
16 please make any corrections that you find necessary,
17 whether that be location, spelling, anything that you
18 find that was not what you recall to be your testimony
19 was inaccurate.

20 But be mindful that any substantive changes
21 can be used to affect judgment of your credibility. For
22 example, if this was a car accident case and you
23 testified that a light was green. And then later on you
24 changed it to red. That's a pretty significant,
25 substantive change, depending on what type of case it

1 was. So that could be used to affect your memory and
2 credibility regarding your testimony.

3 You can take a break at any time you need.
4 Just let us know. We just ask that you don't take any
5 breaks while there's a question pending. Let's see.

6 Is there anything that would potentially
7 affect your ability to provide your best testimony
8 today? You've been up for three days? Are there any
9 medications or anything like that that might affect your
10 memory or ability to be deposed today?

11 A. No.

12 Q. Do you have any questions before we proceed?

13 A. No.

14 Q. Okay. If you do have any questions or
15 anything is unclear as we're going forward, please let
16 me know. If any of the questions are unclear, you're
17 not a hundred percent sure what I'm driving at, please
18 let me know. We don't want people answering questions
19 under the impression that I mean one thing and then
20 later on you're kind of stuck with an answer to a
21 question that it wasn't something exactly what you
22 understood. Do you see where I'm going?

23 A. Yes.

24 Q. Who is your current employer?

25 A. City of Hayward.

1 Q. How long have you been working for the City of
2 Hayward?

3 A. Thirty years.

4 Q. And during that 30 years have you been a sworn
5 officer that entire time?

6 A. Yes. And, actually, 30 years will be up
7 July 5th. So it's not quite 30 years, but really close.

8 Q. We'll let you round up at this point. That's
9 a long time.

10 Prior to working for City of Hayward, did you
11 work in any other sworn law enforcement capacity?

12 A. No.

13 Q. What's your current job title right now?

14 A. Police officer.

15 Q. And I'm assuming that although it was a while
16 back that you went to a POST-certified police academy?

17 A. Yes.

18 Q. Wasn't sure when POST started. I got
19 certified, like, almost 15, 19 years ago.

20 Where did you go to the academy?

21 A. Started July 5th. Actually, the academy
22 started two weeks later. So --

23 Q. Oh, I'm sorry. I meant where, as far as what
24 police academy?

25 A. Santa Rosa.

1 Q. Okay. At the junior college?

2 A. Yes.

3 Q. And are you currently working in the capacity
4 of a training officer? And by training I don't mean as
5 a field training officer. But I mean, do you train any
6 specific subjects?

7 A. No.

8 Q. And have you ever acted in the capacity of a
9 field training officer?

10 A. I was.

11 Q. Okay. Are you currently a field training
12 officer?

13 A. No, I'm not.

14 Q. How long were you a field training officer
15 for?

16 A. Three years.

17 Q. At the time of this incident were you a field
18 training officer?

19 A. No.

20 Q. Have you ever acted in the capacity of field
21 training officer for any of the other defendants?

22 A. No.

23 Q. And do you have any certifications in any sort
24 of advanced officer courses? Anything that's not
25 required as part of your continuing education?

1 A. In 1999 I went to narcotics investigation
2 school. And I went to a crime scene technician school
3 in '96 for two weeks.

4 Q. And those are the only courses that you can
5 think of?

6 A. Yeah. I mean, there's been other schools that
7 I've been to. I was a field training officer. That
8 required a school. I was a vehicle or pursuit driving
9 instructor. I went to school for that.

10 Q. And is it your understanding that you are
11 required to be familiar with Hayward Police Department
12 policies while on duty?

13 A. Yes.

14 Q. And is it your understanding you're supposed
15 to comply with all Hayward Police Department policies
16 while on duty?

17 A. Yes.

18 Q. Of course, any policies that apply while off
19 duty that are unknown to us.

20 And are you familiar with the City of
21 Hayward's WRAP device policy?

22 A. I am.

23 Q. And can you explain to me what a WRAP device
24 is? Or I don't know if that's the proper terminology.

25 A. It's a way to safely control somebody and

1 basically -- basically take away their ability to fight.

2 Q. Okay. And do you recall being trained by the
3 City of Hayward how to apply the WRAP device?

4 A. Yes.

5 Q. Do you recall when you had -- when you had
6 that training or what it looked like?

7 MR. ROLLAN: Objection. Vague as to time and
8 number of times.

9 BY MS. NOLD: Q. You can still answer.

10 A. Yeah. I don't know how many times I've been
11 to the training, but it's I think bi-annually.

12 Q. Okay. So you think there's a WRAP training --

13 A. Correct.

14 Q. -- a course bi-annually?

15 A. Yes. It's -- it's a -- it's -- our people
16 trained us and I believe it's bi-annually.

17 Q. Okay. So it's inter-department, department
18 personnel providing the training?

19 A. Yes.

20 Q. Is this -- is the training a hands-on
21 training, or is it like a classroom learning training?

22 A. No. It's a hands-on training.

23 Q. And during the what you believe are the
24 bi-annual training is there any sort of certification
25 that's provided with the training?

1 A. I don't believe so.

2 Q. Okay. Like, for example, CPR or something you
3 have to be recertified every certain period of time.
4 You're not aware of any certification for the WRAP like
5 that?

6 A. Correct.

7 Q. Okay. When was the last time that you had
8 WRAP training that you recall?

9 A. Probably 2015 or 2016.

10 Q. And you said that the training is a practical
11 application training?

12 A. Yes.

13 Q. So are you actually putting the WRAP restraint
14 on living people?

15 A. Other officers.

16 Q. Other officers.

17 And during the WRAP training, is the training,
18 to your understanding, is it to learn how to apply the
19 various components of the WRAP device?

20 A. Yes.

21 Q. Okay. And during the training are the people
22 that you're trying to put the WRAP device on, are
23 they -- are they remaining stationary or are they, for
24 example, acting out scenarios?

25 A. Yeah. It's just -- they're not acting out

1 scenarios. It's just kind of a round robin where you
2 get three officers or two officers and you put another
3 officer into a WRAP.

4 Q. Okay. But, for example, while you're doing
5 the WRAP training, the hands-on training, there's not a
6 person who's, like, for example, actively resisting or
7 doing anything to obstruct your ability to put on the
8 WRAP, correct?

9 A. Correct.

10 Q. Okay. Just gives us a better idea. Everyone
11 does very different training. So trying to figure out
12 what the capacity of the training was.

13 Do you recall if there was any sort of written
14 or practical test that was done prior to you being
15 completed -- the WRAP training being completed?

16 A. I don't recall any written test.

17 Q. Okay. Are you familiar with the City of
18 Hayward's Mental Illness Commitment Policy?

19 A. Yes.

20 Q. And is it your understanding that the Mental
21 Illness Commitment Policy is related to performing
22 detentions under Welfare and Institution Code 5150?

23 A. Yes.

24 Q. Okay. Can you explain to me what your
25 understand of what a mental illness commitment is from

1 the capacity of a police officer?

2 A. It's -- it's identifying and providing
3 assistance and help for people who have a mental illness
4 or a -- takes them out of their own -- their own mind.
5 And it could be anything from being under the influence
6 and/or being somebody that has documented mental
7 illness. It's being unable to care for themselves and
8 make decisions for themselves.

9 Q. Would it be fair to say that your
10 understanding of what a mental health commitment is, is
11 when a person is a danger to themselves, a danger to
12 others or gravely disabled to the point that they're
13 being involuntarily taken for a mental health
14 evaluation?

15 A. Yes.

16 Q. Sorry to put you on the spot for trying to
17 explain what that is.

18 A. I mean, it's -- yeah.

19 Q. Do you recall being trained by the City of
20 Hayward on how to conduct a mental illness commitment
21 Under Section 5150?

22 A. Yes.

23 Q. And what type of training did you receive?
24 Was it classroom training? Was it practical training,
25 if you recall?

1 A. It was classroom and it was practical. It was
2 small groups, which has instructors from outside of the
3 police department as well as officers giving the
4 training.

5 Q. Okay. And is the mental illness commitment
6 training something that you do on a routine basis
7 annually?

8 A. Yes.

9 Q. Okay. And is there any sort of certification
10 or test required to be considered to be able to do a
11 5150 hold?

12 A. There's no formal certification.

13 Q. Okay. Is it your understanding that a Hayward
14 police officer would need to have completed those
15 trainings prior to conducting a 5150?

16 A. Yes.

17 Q. During the course that is geared at mental
18 illness commitments, do you recall covering any sort of
19 topic areas that had to do with how to interact with
20 people with mental illnesses, how to speak to people
21 with mental illnesses, things like that?

22 A. Yes.

23 Q. Do you recall offhand any of the, I guess,
24 guidelines or suggestions on how to interact with people
25 with mental health problems, even in just a general way?

1 A. I mean, depending on their illness or their
2 mindset, you always try to talk at a base level, not --
3 not argumentative. Not pointed towards them, but
4 pointed towards their affliction, whatever that might
5 be.

6 Q. During the training do you recall having been
7 provided information about different types of mental
8 health conditions, for example, schizophrenia, bipolar
9 disorder, things like that?

10 A. Yes.

11 Q. Do you recall getting training wherein you
12 were notified that some members of the population that
13 are mentally ill may see or hear things that are not
14 real, but that they are realtime experiencing?

15 A. Yes.

16 Q. And is it your understanding that those
17 consideration are things that you're supposed to take in
18 as you're evaluating a person for a mental health
19 commitment?

20 A. Absolutely.

21 Q. So, for example, you understand if a person
22 has schizophrenia, that person may be, say, hearing
23 voices or seeing things that aren't there while they're
24 interacting with you?

25 A. Yes.

1 Q. And you further understand that sometimes
2 people that have schizophrenia may or may not even
3 recognize you to be a police officer, even a human
4 being, for example?

5 A. Correct.

6 Q. And you take all these things into
7 consideration while you're interacting with a mentally
8 ill person, correct?

9 A. Yes.

10 Q. Okay. Have you ever been sued in your
11 capacity as a police officer?

12 A. I have not.

13 Q. Now, I want to talk a little bit specifically
14 about the incident. So when I refer to the incident, I
15 mean to indicate December 19, 2015, the late night,
16 early morning time when Mr. Nelson passed away.

17 A. Yes.

18 Q. So if I refer to the incident, I mean to
19 indicate that incident. If I mean a different date,
20 I'll try to be specific. If it's ever unclear what date
21 I'm talking about, please let me know so I can clarify.

22 On the night of the contact with Mr. Nelson,
23 do you recall if you were riding alone or with another
24 officer?

25 A. I was by myself.

1 Q. And do you guys typically have solo night
2 units?

3 A. Yes.

4 Q. Do you recall what shift you were working?

5 A. Midnight shift from 6:00 p.m. to 6:30 a.m.

6 Q. Do you know if you were the first responding
7 officer to the -- to the Nelson home that night?

8 A. Yes.

9 Q. And were you dispatched to that call for
10 service?

11 A. I was.

12 Q. Do you recall what the -- what the dispatcher
13 told you? What was your understanding of the type of
14 call for service?

15 A. An unwanted guest at a private residence.

16 Q. Okay. Is it fair to say that when you were
17 dispatched and responded to the -- initially responded
18 to the home that you weren't aware that there was a
19 potential 5150 involved?

20 A. I -- I don't recall that. I -- I believe that
21 I was sent for an unwanted guest.

22 Q. Okay. When you were en route to what I'll
23 represent is the property on Ironwood Court, when you
24 were en route to Ironwood, did you contact dispatch or
25 use any other resources to try to get any background on

1 the property you were going to or the individuals that
2 you were contacting?

3 A. No.

4 Q. And while you were en route to the Ironwood
5 address were you aware that other officers were being
6 dispatched as well?

7 A. Yes.

8 Q. At that point who did you know were also an
9 their way?

10 A. It was Officer Shannon as the field training
11 officer of Officer Hall.

12 Q. Okay. Were those the only persons arriving
13 initially?

14 A. Yes.

15 Q. And prior to arriving to the house, did you
16 have any personal knowledge of Roy Nelson?

17 A. Yes.

18 Q. And had you had previous police contacts with
19 Roy Nelson?

20 A. Yes.

21 Q. When you initially arrived at the house, do
22 you recall who you first spoke to?

23 A. It would be his ex-wife.

24 Q. Okay. I'll represent her name is Patsy Nelson
25 Taft or refer to her as Mrs. Nelson so we'll know who

1 we're talking about.

2 So when you first arrived at the house you
3 talked to Patsy Nelson Taft, Mr. Nelson's ex-wife,
4 correct?

5 A. Yes.

6 Q. Do you recall what Patsy told you about
7 Mr. Nelson or the situation?

8 A. That he was paranoid and believing that
9 somebody was -- I'm trying to recall what specific. She
10 wanted him out of the home because of his, I guess,
11 schizophrenia or another issue. But she advised that
12 every now and then she allows him to have a place to
13 sleep. And she couldn't deal with him on this evening.

14 Q. And was it your understanding that Ms. Nelson
15 was contacting the police because she was reporting some
16 sort of criminal activity? Or was it your understanding
17 that she contacted the police to get assistance for his
18 mental health disorder?

19 A. The second.

20 Q. And when you spoke to Ms. Nelson it was your
21 understanding that she was relaying that he had some
22 sort of mental -- diagnosed mental health problem,
23 correct?

24 A. Correct.

25 Q. Do you recall Ms. Nelson making references to

1 Mr. Nelson having recently been released from John
2 George Psychiatric facility?

3 A. Yes.

4 Q. Okay. Had you ever participated in a 5150
5 hold on Mr. Nelson in the past before this incident?

6 A. No.

7 Q. What was the nature of your previous contacts
8 with Mr. Nelson? Do you have any recollection of them
9 specifically or just --

10 A. I -- honestly, I hadn't dealt with Mr. Nelson
11 in probably 20 years. But in the '90s he was well
12 known.

13 Q. And when you say "well known," could you be
14 more illustrative of what you mean by that? Strike
15 that.

16 When you say "well known," do you mean well
17 known to the police department?

18 A. Well known, yes.

19 Q. Okay. He was somebody that you knew by name
20 at that point?

21 A. Yes.

22 Q. Okay. At what point during this incident did
23 you realize that the well-known Mr. Nelson from many
24 years ago was the same gentleman that was --

25 A. As soon as I saw him coming down the stairs.

1 Q. Okay. So you immediately recognized
2 Mr. Nelson esthetically?

3 A. Yes.

4 Q. Can you describe Mr. Nelson's physical
5 stature, physical description?

6 A. Probably 6'2, 6'1, 300 pounds. Stocky.

7 Q. And was that Mr. Nelson's sort of general
8 description from many years ago as well?

9 A. He was -- he was out of shape now. He was a
10 stocky, strong person 20 years earlier.

11 Q. Okay. Obviously, at this point he was larger
12 and older?

13 A. Um-hmm.

14 Q. Okay. And when you said when you first saw
15 Mr. Nelson he was coming downstairs. You mean
16 downstairs from inside of Mrs. Nelson's house?

17 A. Yeah. He was upstairs and I was talking to
18 Ms. Nelson, Mrs. Nelson when he started coming down the
19 stairs.

20 Q. Okay. And at that point did you have direct
21 communications with Mr. Nelson?

22 A. Yeah, briefly. I asked him to step outside.

23 Q. Did he do so?

24 A. So I could talk to him. Yes, he walked out.

25 Q. And was Mr. Nelson at that point compliant

1 with your direction to come outside?

2 A. Yes.

3 Q. Did you have -- when Mr. Nelson came outside
4 did you have any discussion with him about his mental
5 health?

6 A. No. Officer Hall and Officer Shannon were
7 walking up, and I just let him walk to them.

8 Q. Okay.

9 A. And I talked to Mrs. --

10 Q. Ms. Nelson?

11 A. Um-hmm.

12 Q. Is it fair to say after Mr. Nelson came
13 outside, is it fair to say that you transferred custody
14 of him and control of him to the other officers?

15 A. Yes.

16 Q. And you said those officers were Hall and
17 Shannon?

18 A. Correct.

19 Q. Was there anyone else there at that point?

20 A. No.

21 Q. And at that point when you allowed Mr. Nelson
22 to come outside, at that point had he been handcuffed?

23 A. No.

24 Q. Was it your understanding that the other
25 officers would be the ones to handcuff him because you

1 were letting him go past you?

2 A. Well, they were -- and they were just past me.
3 There's a walkway out of the front door. And halfway
4 there it jogs to the right and then to the street. And
5 they stopped him and started talking to him right there.

6 Q. Okay. So at that point is it fair to say that
7 you sort of -- you ceased your policing related to
8 Mr. Nelson at that moment?

9 A. I talked to Mrs. Nelson for a short time. And
10 she expressed her frustration that his -- she allows him
11 to come over every now and then just to have a place to
12 sleep. She's married to somebody else at this point.
13 And she just didn't want the issue of his mental illness
14 keeping everybody awake.

15 Q. Right. And so you continued to speak with
16 Ms. Nelson. And it sounds like she was sort of
17 discussing some of the history or background of the
18 interaction with Mr. Nelson. And Mr. Nelson went on to
19 interact with Officers Hall and Shannon?

20 A. Correct.

21 Q. When Mr. Nelson made his way to Officers Hall
22 and Shannon, do you recall seeing them handcuff him at
23 that point?

24 A. No.

25 Q. Did you see a necessity of handcuffing him at

1 that point?

2 A. No.

3 Q. Was it your understanding when you allowed
4 Mr. Nelson to go to Officers Shannon and Hall, was it
5 your understanding at that point that there had already
6 been a decision related to a 5150 hold of Mr. Nelson?

7 A. My assumption was that they were getting
8 information from him to substantiate a 5150 hold.

9 Q. Okay. And when you contacted -- had contact
10 with Mr. Nelson, he was -- he was verbalizing and
11 communicating, correct?

12 A. No. He wasn't talking at all. His eyes were
13 really wide and looked like he had either -- well, it
14 looked like a mental illness because he had a blank
15 stare right past you.

16 Q. Okay. So when you first contacted -- had
17 face-to-face contact with Mr. Nelson that night, he
18 showed signs that you in your training and experience
19 believed to be indicative of his mental health
20 condition?

21 A. Yes.

22 Q. Okay. So is it fair to say at that point you
23 didn't have any real question about the validity of his
24 mental health?

25 A. Between what his ex-wife was saying and the

1 look he had coming down the stairs, I didn't -- I
2 believed that there was a mental health problem at that
3 time.

4 Q. Okay. So at that point it seemed to you that
5 the 5150 would be warranted?

6 A. Correct.

7 Q. Okay. Was it your understanding from the
8 contact you had at that point with Mr. Nelson that --
9 that he was a danger to himself?

10 A. Yes. A danger to himself and others because
11 he looked like he was kind of -- kind of paranoid or
12 frightened of something which wasn't there. There
13 was -- there was nothing to cause fear. He just had
14 that far away stare.

15 Q. Okay. When you first contacted Mr. Nelson or
16 Mrs. Nelson, do you recall anyone saying that Mr. Nelson
17 was reporting people being on the roof? Do you recall
18 something like that?

19 A. Yes.

20 Q. Do you recall from either one of Mr. or
21 Mrs. Nelson him believing that his adult son had been
22 kidnapped or something to that effect?

23 A. Yes.

24 Q. And are those some of the things that you took
25 into consideration?

1 A. Yeah. And they were real quick. I mean, she
2 had -- she had those specifics that she was talking
3 about the second the door opened.

4 Q. Okay.

5 A. She was frustrated.

6 Q. Sure. Did -- and, obviously, when you arrived
7 you did not see anyone on the roof or anything to
8 validate his -- his concerns?

9 A. Correct.

10 Q. Do you know where Mr. Nelson went after --
11 after he went with Officer Hall and Shannon while you
12 were talking to Mrs. Taft? Was he within the perimeter
13 of you being able to see him at that point?

14 A. Yes. Their car was parked right behind the
15 driveway on the street. And so that's where they went
16 to. I could see them.

17 Q. So you could see them by the patrol car from
18 where you were standing?

19 A. Yes.

20 Q. At some point you finished up with
21 Mrs. Nelson?

22 A. Yes.

23 Q. Did you go back over to the patrol car where
24 Mr. Nelson was?

25 A. Yes.

1 Q. At that point where was Mr. Nelson?

2 A. On the right side of the backseat.

3 Q. Was he seated in the car?

4 A. He was.

5 Q. And at some point somebody made a decision to
6 remove Mr. Nelson from the Ironwood address; is that
7 correct?

8 A. Yes.

9 Q. Do you know who made that decision?

10 A. I had input with that decision. I can't
11 remember if I'm the only person that had the thought of
12 transporting him to Chabot College.

13 Q. And why did you choose to transport Mr. Nelson
14 to Chabot?

15 A. We were at that location -- and I'm only
16 speculating.

17 Q. No. No. We don't want you to speculate.

18 A. Okay. I don't know the amount of time.
19 That's what I'm saying. From the time that he got into
20 the car we were there waiting for an ambulance it seemed
21 like an hour.

22 Q. Okay.

23 A. Close to an hour.

24 Q. And it's fair to say, I mean, we know you
25 don't know exactly the period of time. Your best --

1 your best estimate of the time is fine. We just don't
2 want it to be, you know, it was hours. If you feel like
3 at the time it was your best idea that it was an hour,
4 that's fine.

5 So while you guys were in front of the house
6 waiting for the ambulance, what was your understanding
7 of what the delay was for the ambulance or is that
8 typical response time for the ambulance in that area?

9 A. It is not typical. And we kept asking for an
10 ETA on the ambulance. And they were still, I guess, too
11 busy. The reason -- my reasoning moving him was he was
12 really loud at times. People were coming outside of
13 homes, and it was after midnight, looking, seeing what
14 was going on.

15 There's only -- well, there's a house -- or a
16 unit on either side of -- of Mrs. Nelson's residence.
17 And because of the noise I thought that it would be best
18 just to take him out of the neighborhood to Chabot
19 College. It's well lit, nobody's there, and there's
20 cameras everywhere at the college.

21 Q. Okay. Was -- do you recall, was it your
22 understanding that the ambulance was delayed in some way
23 related to a shooting, some sort of a trauma incident?

24 A. At one point, but it just never cleared up.

25 Q. Was there any conversation at that point when

1 you were still at Ironwood about going ahead and having
2 one of you transport Mr. Nelson to the mental health
3 facility yourselves?

4 A. The mental health facility does not accept
5 anybody without medical clearance. So I don't know that
6 there was any real discussion about driving him there.
7 That takes -- we have a small -- not a small, but a --
8 we've got eight officers for the entire shift.

9 Q. So it's your understanding that prior to
10 taking him to a mental health facility, I'm using John
11 George as an example because that's probably where he
12 would have gone.

13 A. Right.

14 Q. That prior to doing -- to getting him to John
15 George, that he would have needed to go to a local
16 medical hospital for medical clearance and then would be
17 transitioned to the mental health facility?

18 A. Correct.

19 Q. Okay. So then once the decision was made to
20 transfer Mr. Nelson to Chabot, then I believe
21 Officer Hall drove the patrol car over?

22 A. Correct.

23 Q. Were you aware that Mr. Nelson was transported
24 without -- without a seatbelt on?

25 A. At the time no, I wasn't.

1 Q. Okay. Is it your understanding that you're
2 supposed to have individual -- civilians seatbelted
3 prior to transporting them in a patrol car?

4 A. Yes.

5 Q. But that wasn't something you were aware of
6 prior to the car being driven over to Chabot?

7 A. Trying to think back. I -- I can't recall
8 whether he was seatbelted to begin with and he was --
9 took off his seatbelt, or it wasn't applied to him. I'm
10 not sure.

11 Q. Okay. Fair to say you're not sure exactly
12 what the situation was with the seatbelt because you
13 weren't participating in it?

14 A. Correct.

15 Q. Okay. And that's fine because we don't want
16 you speculate on what may or may not have happened.
17 Because if you don't have direct knowledge, we prefer
18 you just to say you're not sure.

19 But in contrast to that, if somebody told you
20 later that they had done something, you can testify to
21 that. But not necessarily things that you -- but not
22 anything you didn't see with your own eyes.

23 A. Correct.

24 Q. And when they went off to Chabot, is it fair
25 to say that you followed them in your patrol car?

1 A. Yes.

2 Q. Okay.

3 A. Or I'm sorry. He could have -- I mean,
4 Officer Hall could have followed me to -- to Chabot
5 College. I think that's the way it actually happened.
6 I think I was in front.

7 Q. But you went to Chabot together, essentially?

8 A. Yes.

9 Q. At that point when you were headed to Chabot
10 was Officer McCrea already on scene or was he not there
11 yet?

12 A. He was not.

13 Q. Okay. And it was my understanding he was the
14 acting sergeant that night; is that correct?

15 A. I believe so.

16 Q. Is it your understanding that once you guys
17 had actually arrived at Chabot that Mr. Nelson had
18 already been evaluated for the 5150 hold, or was that
19 still pending?

20 A. No. There was enough reasonable suspicion
21 that he had a crisis.

22 Q. Based on your own observations of him you had
23 already made that determination, correct?

24 A. Correct.

25 Q. So going over to Chabot was really essentially

1 to facilitate waiting for the ambulance to come in a
2 place that would potentially be less disturbing to his
3 neighbors?

4 A. Correct.

5 Q. And at some point there was a decision to get
6 Mr. Nelson out of the car and put him into a WRAP
7 device; is that correct?

8 A. Yes.

9 Q. At that point had Officer McCrea already
10 arrived on scene?

11 A. Yes.

12 Q. Whose -- whose decision or -- whose decision
13 was it to place Mr. Nelson into a WRAP device?

14 A. I don't know.

15 Q. Okay. Is it fair to say that you did not
16 participate in any conversations regarding placing
17 Mr. Nelson into a WRAP device?

18 A. That's correct.

19 Q. Once the decision had been made to take
20 Mr. Nelson out of the car and to put him into a WRAP
21 device, are you aware of any sort of discussion or
22 planning between the officers of how to facilitate that?

23 A. No.

24 Q. So, to your knowledge, you didn't participate
25 in any sort of discussion or planning on how to

1 facilitate getting Mr. Nelson out of the car and into
2 the WRAP device?

3 A. That's correct.

4 Q. How did you become aware that the WRAP device
5 was going to be applied? Do you recall?

6 A. I opened up the right side rear door and
7 Mr. Nelson stepped out of the car. And then we -- or he
8 starting walking around the back of the vehicle. I was
9 trying to hold on to him. And then he was taken to the
10 ground. I don't recall who started that. But when he
11 went to the ground I was holding his legs.

12 Q. Okay. We'll go back a couple steps. Did you
13 later become aware that they had -- that the other
14 officers had had a discussion with a plan of how to get
15 him out of the car?

16 A. I was not part of that discussion. So I
17 didn't know that that was what was going to happen.

18 Q. Okay. So when you opened the car door you
19 weren't aware of a plan to do something different than
20 that, correct?

21 A. Correct.

22 Q. Okay. And as a result of opening the door,
23 Mr. Nelson followed suit and got out of the car?

24 A. Correct.

25 Q. When Mr. Nelson got out of the car, which

1 officers were on the passenger side of the car at that
2 point, besides you?

3 A. Me.

4 Q. Just you. When Mr. Nelson got out of the car,
5 did he verbally threaten or physically threaten you in
6 any way?

7 A. No.

8 Q. When Mr. Nelson got out of the car, did he
9 spit or kick or punch or do anything that caused you to
10 consider yourself to be in danger, other than his
11 generally being a large man?

12 A. Well, yeah. And his mental crisis at the
13 time. No, I didn't have any.

14 Q. Fair to say that other than just the general
15 concerns with a person who has mental health problems
16 that could be unpredictable, that you had no specific
17 fears of Mr. Nelson at that point or concerns about
18 Mr. Nelson at that point?

19 A. I mean, I was fearful of what could happen.
20 And at the time I didn't -- didn't see any reason other
21 than he was -- I didn't see any exigency. But he -- he
22 was -- I'm not even sure how he got to the ground. But
23 I didn't see anybody -- maybe -- maybe they talked him
24 down or something. But as we got around -- as I got
25 around the back of the vehicle he was assisted to the

1 ground.

2 Q. And when he was assisted to the ground did it
3 seem that under the circumstances that he was being
4 cooperative?

5 A. Yeah.

6 Q. And once Mr. Nelson got onto the ground, do
7 you recall which officers were there at that point?

8 A. Acting Sergeant McCrea, Officer Padavana,
9 Officer Suzuki, I believe.

10 Q. And did you say Officer Hall?

11 A. Yeah. Officer Hall and Officer Shannon.

12 Q. So at that point when Mr. Nelson was taken to
13 the ground, do you recall anybody other than
14 Officers McCrea, Shannon Hall, Padavana and Suzuki and
15 yourself being present?

16 A. Yeah. Officer Gillette was there.

17 Q. And of the officers that you've named, do you
18 recall which ones actually had physical contact with
19 Mr. Nelson?

20 A. I did. Officer Padavana did. Officer Shannon
21 did. Officer Hall did.

22 Q. What about Officer McCrea? Do you recall
23 Officer McCrea participating in putting Mr. Nelson to
24 the ground?

25 A. I don't recall.

1 Q. And is it your understanding that
2 Officers Gillette and Suzuki were present, but didn't
3 have physical contact with Mr. Nelson?

4 A. Well, later on they had some physical contact,
5 but that was CPR.

6 Q. Okay. Thank you for clarifying. And I meant
7 physical contact, I did mean prior to him -- prior to
8 him becoming unresponsive.

9 A. Not that I recall.

10 Q. Okay. And I only ask what you saw. Certainly
11 something could have happened. There was a lot going on
12 at once. Somebody could have done anything.

13 A. And I was all the way down at the ankles. I
14 was holding legs.

15 Q. Okay. And so once Mr. Nelson was on the
16 ground, was it your understanding that somebody up
17 towards his arms and upper torso was in the process of
18 trying to handcuff him?

19 MR. ROLLAN: Calls for speculation.
20 Objection.

21 BY MS. NOLD: Q. And I mean just from what you observed
22 being there.

23 A. I didn't -- I didn't see anybody -- from where
24 I was at trying to hold his legs, I didn't see anything
25 else.

1 Q. Is it fair to say that your position by his
2 legs there were other officers obstructing --
3 obstructing your view of what else was going on?

4 A. Yes. I was literally on the ankles. And that
5 was -- I didn't go up any further or anything.

6 Q. Prior to Mr. Nelson being taken out of the
7 car, do you recall having any conversation with him
8 while he was in the car or speaking to him or him making
9 any sort of comments?

10 A. No. No. He was -- he was not -- he didn't
11 speak at all that I recall.

12 Q. Okay. And once -- once you -- when you were
13 down at Mr. Nelson's ankles, what was your understanding
14 of what was going to be going on at that point once he
15 was taken to the ground?

16 A. Well, at that point I realized that the WRAP
17 was going to be used. That was the first I knew of it.
18 And I just assisted with the legs to mobilize him --
19 immobilize him.

20 Q. And while you were down do you recall any of
21 the other officers giving directions or providing
22 directions regarding the application of the WRAP or the
23 contact with Mr. Nelson? Was there anybody in charge
24 providing assistance in telling the other officers what
25 to do?

1 A. I don't recall anybody telling others what to
2 do. Using the device is -- it's not the first thing you
3 go to, but it's used more often. I guess each officer
4 figures what they're going to do and it just builds on
5 itself like that.

6 Q. Okay. And once -- at some point, obviously,
7 you said once you realized the WRAP device came out, is
8 that what caused you to know that the WRAP was going to
9 be applied?

10 A. Yes.

11 Q. While you were -- who was assisting you with
12 applying the WRAP device?

13 A. Well, I had the ankles. And the first thing
14 you do is you cross the legs at the ankles and you wrap
15 it with a small Velcro strap.

16 Q. And were you able to apply that strap to
17 Mr. Nelson's ankles?

18 A. Yes.

19 Q. During the time you were doing that was
20 Mr. Nelson kicking? Do you recall?

21 A. He was -- I wouldn't say he was kicking. He
22 was moving his legs. It took myself, I believe it was
23 Officer Padavana above me. So that would be around his
24 knees area. And I was lifting up his legs to get the
25 WRAP underneath him.

1 Q. Do you recall during that time anyone trying
2 to -- anyone explaining or trying to explain to
3 Mr. Nelson what was going on as far as being placed in
4 the WRAP device and being transported for mental health
5 treatment, anything like that?

6 A. Well, he was -- he was advised the mental
7 health treatment hospital was ultimately where he was
8 going to go for -- for care. And he was told that. I
9 don't recall -- I don't recall any conversation that was
10 up in his -- the WRAP has -- first thing is the strap
11 around the ankles. And then a vest over chest -- chest
12 and back and the WRAP around the leg. And I didn't hear
13 anybody talking between that. I'm sure that there was
14 lots of talking, but I didn't pay attention to it.

15 Q. Fair to say you were focused on --

16 A. My part.

17 Q. -- securing your portion?

18 To your knowledge, which officers were
19 assisting in applying the WRAP itself? It sounded like
20 you and Officer Padavana near the knee area?

21 A. He was -- yeah. He was above me. I had the
22 ankles. And I'm not sure who else helped, because
23 that's a heavy part of the body. So I'm sure somebody
24 else helped Padavana pick him up enough to get the WRAP
25 underneath his body.

1 Q. Is there a set number of people that -- that's
2 necessary to apply a WRAP? Does it depend on the size
3 of the person?

4 A. It depends on who you're applying it to.

5 Q. And what they're doing while you're trying to
6 apply it?

7 A. Correct.

8 Q. Are there any sort of set positionings when it
9 comes to applying the WRAP? Like, is there a designated
10 foot person, a knee person, or is that just how it
11 turned out?

12 A. It's how it turned out this time. I mean,
13 sometimes it's one person with the ankle and the WRAP.
14 Depends on how cooperative the person is.

15 Q. And are you aware of any weight restrictions
16 related to applying the WRAP? Any type of high-end
17 weight that would not allow a person to fit into a WRAP
18 device?

19 A. I'm not aware.

20 Q. Have you ever had a situation where a person
21 was too large to get into the WRAP device?

22 A. The straps and everything, no. The straps are
23 long enough to where large people could still fit their
24 legs in it to mobilize them -- immobilize them.

25 Q. So you had no reason to think that Mr. Nelson

1 wouldn't fit? That was not a concern as you were going
2 forward?

3 A. No, it wasn't.

4 Q. Now, did Mr. Nelson successfully -- did the
5 WRAP device end up being successfully applied to
6 Mr. Nelson?

7 MR. ROLLAN: Objection. Vague.

8 BY MS. NOLD: Q. I mean, just did it get completed?
9 Was it applied in full or was it partial?

10 A. I think it was partial, and then it was
11 removed.

12 Q. Did you ever hear when Mr. Nelson was
13 telling -- telling the officers that he could not
14 breathe?

15 A. I did not hear that.

16 Q. Have you heard the -- you've seen the videos
17 where those things were said. And although I don't
18 recall hearing that on your video, probably due to your
19 point of view, were you ever made aware that Mr. Nelson
20 had said that he couldn't breathe during this incident?

21 A. I was -- I was made aware of that afterwards.
22 I mean, like a lot afterwards. I didn't know that --

23 Q. He had said it at the time?

24 A. Right.

25 Q. Okay. Just for clarity, you became aware that

1 he had said that, but not in realtime at the time he
2 said -- for example, at the time he said "I can't
3 breathe" nobody said, whoa, he said he can't breathe or
4 anything to alert the other officers?

5 A. Correct. I didn't hear it.

6 Q. That's what I mean. If you had heard
7 Mr. Nelson say that he couldn't breathe, would you have
8 intervened in some way?

9 A. Yes.

10 Q. What would you have done?

11 A. Stopped applying the WRAP until we found out
12 that he was saying that or he wasn't.

13 Q. Okay. And at some point in the process did
14 you become aware that Mr. Nelson was having some sort of
15 medical distress?

16 A. I became aware of it when they started taking
17 the chest part off of him.

18 Q. Okay. Prior to that you hadn't been made
19 aware of Mr. Nelson having either verbally or physically
20 made indications he was having medical distress?

21 A. Correct.

22 Q. And when they started taking the device off of
23 him, did you make an inquiry? How did you become aware
24 that he was having medical distress?

25 A. I can't remember who the officer was -- was

1 trying to get a pulse. And they couldn't find one. And
2 then -- well, actually, well, I've seen the video. So I
3 mean, that's when I recognized that that was happening.

4 Q. I know it's very hard to distinguish between
5 what you've seen and versus what your point of view was
6 at the time.

7 A. That's correct.

8 Q. It's one of the issues with lapel cameras.
9 And everybody recognizes that the camera's seeing things
10 you're not seeing because the camera's focusing
11 universally and you're typically focusing on one thing.
12 So really to the best of -- we want to know what you
13 knew at the time. But I appreciate you trying to make
14 the distinction in your mind of where you became aware
15 of that.

16 So at some point you said that you saw that
17 they were trying to get a pulse. Became aware that
18 there was something medical going on. At that point
19 what happened from your perspective?

20 A. From what I recall, the other officers began
21 taking off the WRAP and they started CPR chest
22 compressions.

23 Q. Did you participate in the CPR?

24 A. I did not.

25 Q. Did you ever during the course of the incident

1 when Mr. Nelson was on the ground, up until the time he
2 became unresponsive, did you ever yourself see
3 Officer Shannon appear to be kneeling on Mr. Nelson's
4 back putting some portion of his body weight on
5 Mr. Nelson's back?

6 A. No.

7 Q. Did you at some point later become aware of
8 the fact that that had occurred?

9 A. Yes.

10 Q. Was -- when you saw the video of
11 Officer Shannon with his knee or knees on Mr. Nelson's
12 back, was that consistent with how you were trained to
13 interact with people who were facedown on the ground in
14 handcuffs?

15 A. No. I don't know. I mean, I don't know that
16 he was handcuffed or I don't know that that even
17 happened personally.

18 Q. Right. Okay. Yeah, I understand. I know
19 some of the portions of the video you can see bits and
20 pieces of things and some of it's unclear.

21 A. I'm the person with the exposed arms.
22 Everybody else is in long sleeves. So I was way down at
23 his feet.

24 Q. Right. We don't know who's who until we see
25 you guys.

1 So once it became apparent that Mr. Nelson was
2 having some sort of medical distress, at some point
3 somebody summoned emergency medical care, correct?

4 A. Yes.

5 Q. Do you recall after Mr. -- after it became
6 apparent Mr. Nelson was having some sort of medical
7 distress, and while, obviously, we know you're not a
8 doctor, it was apparent he was having some -- something
9 not right, correct?

10 When Mr. Nelson was turned over, do you recall
11 hearing communications from Officer Hall wherein she was
12 saying that Mr. Nelson's sweatshirt had kind of balled
13 up around his neck and knocked him out or something to
14 that effect?

15 A. I didn't hear that.

16 Q. You never heard that on the videos thereafter?

17 A. No.

18 Q. And from your perspective while the -- from
19 the time Mr. Nelson went to the ground until the time
20 Mr. Nelson was found to be unresponsive, did you ever
21 see what was going on in his upper torso, who was doing
22 what?

23 A. I did not.

24 Q. I mean, I know you've been there for a long
25 time. In your 30 years with Hayward Police Department,

1 have you ever been trained on positional asphyxiation?

2 A. Yes.

3 Q. And what's your understanding of what
4 positional asphyxiation is?

5 MR. ROLLAN: Objection. Calls for expert
6 opinion.

7 BY MS. NOLD: Q. And I don't want -- I don't want you
8 to provide an expert opinion. Just what your
9 understanding is of what that is as it applies to police
10 officers.

11 A. Just the inability to catch -- catch a breath
12 because of the position that they're in or trouble
13 breathing based on a position they're in.

14 Q. And the training in positional asphyxiation,
15 is that something that's like an annual training or is
16 that periodic? Do you recall?

17 A. With the WRAP I'm not sure if it's bi-annual
18 or annual.

19 Q. Okay. But it's your understanding that the
20 training relating to positional asphyxiation is a part
21 of the component of the WRAP training?

22 A. Yes.

23 Q. Is it your understanding that positional
24 asphyxiation is a potential -- a thing that could
25 potentially happen while the WRAP device is being

1 applied or during that process?

2 A. Yes.

3 Q. Do you recall during the positional
4 asphyxiation training receiving any information about
5 things that officers could do that could contribute to
6 positional asphyxiation or anything to avoid to avoid a
7 person potentially dying from positional asphyxiation?

8 A. I mean, anything that obstructs their
9 breathing ability, whether -- sometimes it's -- it's
10 handcuffs and being laid down -- laid on your stomach.

11 Q. Is it your understanding from your training or
12 experience that a person's obesity can be a contributing
13 factor to positional asphyxiation?

14 A. Yes.

15 Q. Did you observe Officer Hall remove her Taser
16 during this incident?

17 A. I did not.

18 Q. Did you remove your Taser during this
19 incident?

20 A. Yes.

21 Q. And at what point during the incident, if you
22 recall, did you remove your Taser?

23 A. At the residence on Ironwood Mr. Nelson
24 started kicking the door, trying to kick the door open.
25 He was kicking on the bars that are covering the window

1 or the side windows. He, I guess, built himself or
2 worked himself up enough to where he was kicking the
3 doors. And he seemed to be close to opening the door.

4 Q. Okay. And at that point you brought out your
5 Taser; is that correct?

6 A. I did.

7 Q. What did you do with the Taser? Did you arc
8 it? Did you do something to just what I would call a
9 display of force?

10 A. I believe that I did arc it, but I'm not --
11 I'm not sure that I did. But I was -- I was trying to
12 get him just to calm down. I didn't point the Taser at
13 him. I just, I guess, wanted him to calm himself.

14 Q. But you didn't deploy your Taser, correct?

15 A. No.

16 Q. At some point was there a figure four leg lock
17 applied to Mr. Nelson that you were aware of?

18 MR. ROLLAN: Objection. Calls for
19 speculation.

20 BY MS. NOLD: Q. I just mean with whatever you
21 witnessed or participated in.

22 A. I don't recall. I don't recall any figure
23 four.

24 Q. Okay. Is it fair to say you did not figure
25 four Mr. Nelson in a figure four leg lock?

1 A. I don't recall that I did or didn't. Seems
2 figure four would have been difficult. I don't know
3 that it happened or not.

4 Q. Okay. At some point while trying to apply the
5 leg portion of the WRAP device it looks like from the
6 record that the WRAP was backwards or upside down. Did
7 you recall that?

8 A. I do recall it. I am not sure that -- I think
9 that the WRAP was -- was actually the straps were on the
10 top part and it had to be switched so that the straps
11 were underneath it.

12 Q. Okay. And, to your best recollection, how
13 much time was added to the application of the WRAP
14 device from it being upside down or inside out or
15 whatever the issue was?

16 A. Twenty seconds, 30 seconds.

17 Q. Okay. And can you estimate about how long it
18 took to get Mr. Nelson into the device from the time
19 that you guys started trying to apply it until whenever
20 you stopped?

21 A. My best guess would be about two minutes.

22 Q. To your knowledge, when Mr. WRAP -- Mr. WRAP.
23 Mr. Nelson -- strike that. It's Friday.

24 To your recollection, when Mr. Nelson was
25 being placed in the WRAP device, was there anybody that

1 was charged with monitoring Mr. Nelson's vital signs?

2 A. I believe -- I believe there was, but I'm not
3 sure.

4 Q. Okay. Fair to say that you know that you were
5 not charged with monitoring vital signs because of your
6 position by his feet?

7 A. Right.

8 Q. During the WRAP training that you have
9 received, is there typically somebody who's designated
10 to be the person who is going observe the person's vital
11 signs to make sure that the person is remaining
12 medically stable while being placed in the WRAP device?

13 A. Yes.

14 Q. Okay. And was that part of the training that
15 you received from the Hayward PD?

16 A. Yes.

17 Q. Who would typically be the person to designate
18 the person to do that?

19 A. In my opinion the person who is closest to
20 that portion of their body is the person that's taking
21 care of that.

22 Q. Okay. So your understanding of, I guess, not
23 so much policy because it is not actually covered by a
24 policy, but the practice of the department would be that
25 the person who was in the -- fair to say, the best

1 position to be able to see the person, observe the vital
2 signs, would be the person who would be tasked with
3 monitoring that?

4 A. Correct.

5 Q. To your knowledge, were you ever retrained as
6 a result of the incident with Mr. Nelson?

7 MR. ROLLAN: Objection. Vague as to training.
8 What training?

9 BY MS. NOLD: Q. And I just mean anything -- any sort
10 of training or retraining, recertification, anything
11 that you understood occurred as a result of this
12 incident with Mr. Nelson specifically.

13 A. I didn't -- did not receive any additional
14 training.

15 Q. During the incident, did you ever see any of
16 the other officers strike Mr. Nelson in any way, either
17 with a fist or a baton, any sort of object, anything
18 like that at all?

19 A. I did not.

20 Q. It's fair to say that you never struck
21 Mr. Nelson with anything?

22 A. I did not.

23 Q. To your understanding, who was -- who was the
24 senior supervisory officer on the scene, person who
25 would have been in charge?

1 A. Acting Sergeant McCrea. There were also three
2 field training officers there.

3 Q. At that point -- okay. Besides
4 Officer Shannon, who were the other field training
5 officers there?

6 A. Officer Padavana and Officer Suzuki.

7 Q. And when you have an incident where there were
8 multiple officers involved, if, for example, there
9 wasn't an acting sergeant there, who would be deemed to
10 be the person in charge? The senior officer?

11 A. Yes.

12 Q. So --

13 A. I'm sorry. Not the senior officer. I was
14 senior, but I'm not a field training officer. And
15 that's a lower supervision position. So it would be the
16 acting sergeant. And then I guess the most senior FTO
17 or down the line.

18 Q. Then those three, and then you.

19 A. Yeah.

20 Q. Because although you're senior in years, the
21 supervisory position takes you out of order for
22 seniority?

23 A. Right.

24 Q. But that incident, it was your understanding
25 that Officer McCrea was the supervisory person?

1 A. Yes, as I recall.

2 Q. Do you recall whether Officer McCrea was the
3 person who brought the WRAP device?

4 A. I don't recall any other supervisors, and
5 they're the only ones that carry the WRAP.

6 Q. And that was my next question. My
7 understanding that only the supervisory personnel are
8 authorized --

9 A. Sergeants only, sergeants and lieutenant.

10 Q. So a sergeant or lieutenant has to be involved
11 in an incident that results in a WRAP application,
12 correct?

13 A. Yes.

14 Q. Okay. And after Mr. Nelson became
15 unresponsive, how long after that did you become aware
16 that Mr. Nelson had passed away?

17 A. I guess immediately. I mean, there was --
18 there was a lot of CPR being done, but there wasn't
19 anything happening.

20 Q. So it was your understanding --

21 A. Couldn't find a pulse.

22 Q. Sorry about that. Your understanding, even
23 though he was not -- probably actually have a time of
24 death until some later period, to your understanding
25 Mr. Nelson never regained any sort of consciousness,

1 correct?

2 A. Correct.

3 Q. With that in mind, that the incident had
4 either been fatal or significant, were you and the other
5 officers sequestered at that point? Do you know what I
6 mean by that?

7 A. Yeah. I don't recall being sequestered.

8 Q. Do you recall having any conversations -- and
9 I don't mean on scene. I mean once you had left the
10 scene, do you recall having any other conversations with
11 the other defendant officers prior to speaking to your
12 attorney?

13 A. No. I didn't speak to anybody about that.

14 Q. Okay. Were you -- after Mr. Nelson became
15 unresponsive, at some point did somebody in the
16 supervisory level notify you that you should go back to
17 the department or something, for example, to meet with
18 an attorney?

19 A. Yes.

20 Q. Of course I don't want to know what the
21 conversations were with the attorney. Just looking for
22 any conversations that occurred prior to that with any
23 other department personnel. Do you recall any
24 conversations with anyone else?

25 A. No.

1 Q. Do you recall how many times you were
2 interviewed by the department in relationship to this
3 incident?

4 A. Once.

5 Q. And that was with your attorney, correct? I'm
6 not talking about the content of the conversation. Do
7 you recall whether he was there?

8 A. No. I don't recall an attorney being present.

9 Q. Okay.

10 A. Just two detectives and me.

11 Q. That happens again, you should probably have
12 your attorney there. No. No. No.

13 And I believe you may have answered this. Did
14 you -- did you have any sort of disciplinary actions
15 against you related to this incident?

16 A. No.

17 Q. I'm going to take a quick break and go off the
18 record for five minutes.

19 (Break was taken.)

20 MS. NOLD: We're back on the record. Same
21 rules still apply. I don't have any more questions. I
22 think your attorney probably does.

23 EXAMINATION

24 MR. ROLLAN: I just have a few clarifying
25 questions.

1 Q. So, Officer McKee, earlier you had indicated
2 that you -- that at some point when Mr. Nelson was
3 noticed to be unresponsive that the officers took the
4 chest harness portion of the WRAP off of him.

5 Is -- was it your understanding that the
6 officers placed the chest harness portion of the WRAP or
7 were you able to see that at all?

8 A. I wasn't able to see that.

9 Q. So you -- you -- you don't know whether the
10 officers --

11 A. Correct.

12 Q. -- took that off? Okay. Just to clarify
13 that.

14 And earlier also Ms. Nold had asked a question
15 as to whether if you had heard some -- a suspect say
16 that they could not breathe while the WRAP was being
17 applied. And you responded that you would have stopped
18 applying the WRAP to figure out what the need was.

19 Are there instances where you would not
20 necessarily stop applying the WRAP when someone's
21 exclaiming that they couldn't breathe?

22 A. I mean, if they're explaining that they're
23 not -- that they can't breathe, they're breathing. So
24 lack of any other options, I assume that they're
25 breathing.

1 Q. Is it your understanding that your training
2 is, as it relates to application of the WRAP, is to when
3 you notice someone is in medical distress to stop
4 application as soon as practicable or as soon as
5 possible?

6 A. Yes.

7 Q. And could there been situations where that
8 involves completing the leg portion of the WRAP device
9 before turning a suspect over into a recovery position?

10 A. Yeah. I mean, it depends on where you're at.
11 I'm at the ankles and --

12 Q. This is just generally.

13 A. Yeah. How did you --

14 Q. Do you want me to rephrase that question?

15 A. Even -- yes, please. I'm sorry.

16 Q. Okay. Is it --

17 MS. NOLD: Hold on. I'm going to make a
18 belated objection to referring to Mr. Nelson as a
19 suspect. Because Mr. Nelson was not suspected of a
20 crime. I just want that to be -- I don't want --

21 MR. ROLLAN: Well, just generally a suspect.

22 MS. NOLD: Right. And I just don't want that
23 to be on the record. No one so far has referred to him
24 as a suspect. We all understand he wasn't convicted or
25 accused or thought to have committed any crime

1 whatsoever. So I just don't want that to be something
2 that pops out about him being a suspect.

3 MR. ROLLAN: And that was just a general
4 reference to a person for which a WRAP was being
5 applied.

6 Q. Is it your understanding that in some
7 situations an officer might decide to complete the leg
8 portion of the WRAP device before turning or before
9 placing someone into a recovery position once they have
10 been noticed to be unresponsive?

11 A. Yes. You can -- you can complete your task as
12 long as it's not, I mean, impeding their -- impeding
13 their breathing.

14 Q. And this is because part of the consideration
15 is officer safety, right?

16 A. Correct.

17 Q. Because there could be a situation where
18 someone is unresponsive that later then becomes
19 responsive and tries to --

20 A. Kick.

21 Q. Right. Present some physical considerations
22 to the officers, correct?

23 A. Correct.

24 MR. ROLLAN: So those are all my follow-up
25 questions.

DEPOSITION OF OFFICER LLOYD MCKEE

1 MS. NOLD: Okay. I think we're done.

2 THE COURT REPORTER: Would you like a
3 transcript?

4 MR. ROLLAN: Yes, please.

5 (Whereupon, at 4:07 p.m., the deposition of OFFICER
6 LLOYD MCKEE was concluded, this date.)

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10 OFFICER LLOYD MCKEE

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1 STATE OF CALIFORNIA)
 2) ss.
 3 COUNTY OF ALAMEDA)
 4

5 I hereby certify that the witness, OFFICER
 6 LLOYD MCKEE, in the foregoing deposition appeared before
 me, Kelly McKissack, a Certified Shorthand Reporter and
 7 a disinterested person.

8 Said witness was then and there at the time
 and place previously stated by me placed under oath to
 9 tell the truth, the whole truth and nothing but the
 truth in the testimony given on the date of the within
 deposition; that the deposition is a true record of the
 10 witness' testimony as reported by me.

11 The testimony of the witness and all questions
 and remarks requested by Counsel was reported under my
 12 direction and control, caused to be transcribed into
 typewritten form by means of Computer-Aided
 13 Transcription.

14 I am a Certified Shorthand Reporter licensed
 by the State of California, and I further certify that I
 15 am not interested in the outcome of the said action, nor
 connected with, nor related to any of the parties in
 16 said action, nor to their respective counsel. I am not
 of counsel or attorney for either or any of the parties
 17 to the case named in the within caption.

18 IN WITNESS WHEREOF, I have hereunto affixed my
 signature this 20th day of April, 2018.
 19
 20

21 __/s/Kelly McKissack_____

22 Kelly McKissack
 Certified Shorthand Reporter
 23 California License No. 13430

24 --o0o--
 25

DEPONENT SIGNATURE PAGE

I hereby certify that I have read my deposition
made those changes and/or corrections I deem
necessary, and approve the same as now written.

Executed this _____ day of _____, 2018

By:

LLOYD McKEE

Under Penalty of Perjury

--o0o--

DEPONENT SIGNATURE WAIVER

The signing of the deposition by the deponent was conditionally waived at the time of the taking of the deposition.

Barbara J. Butler, CSR #5604

Upon completion of the foregoing transcript, the witness was notified it was ready for signature, but the deposition was not signed by the witness for the following reason:

BARBARA J. BUTLER & ASSOCIATES

--o0o--

WITNESS LETTER

TO: Officer Lloyd McKee Date: 04.24.18
c/o Raymond R. Rollan, Deputy City Attorney
City Attorney's Office
777 B Street Depo: 04.06.18
Hayward, CA 94541 Ref. #18040621C

RE: Roy Nelson, III, et al. v. City of Hayward, et al.

Dear Officer McKee:

The transcript of your Deposition reported in the above-captioned cause has been prepared and will be available at this office for your inspection and signature for a period of 30 days from the date of this letter.

Please contact our office between the hours of 9:30 a.m. and 5:00 p.m. Monday-Friday, to schedule an appointment. Or, if you prefer, contact your attorney to read, correct and sign the copy of your Deposition before a Notary Public.

Read the transcript making any changes and/or corrections necessary. In making any changes and/or corrections, please use the following guide:

1. DO NOT WRITE on the original transcript.
2. SIGN UNDER PENALTY OF PERJURY at the end of the Deposition on the Deponent Signature Page.
3. List each change and/or correction on the Correction Sheet provided at the end of the Deposition. Signature is required at the bottom of the Correction Page.
4. Forward the signed Deponent Signature Page and Correction Sheet to:

Barbara J. Butler & Associates
Certified Court Reporters
P.O. Box 3508
Santa Clara, California 95055
(510) 832-8853 or (408) 248-2885

Upon receipt of items requested in this letter, I will forward copies of same to all Counsel.

Sincerely,

/s/Barbara J. Butler
Barbara J. Butler, CSR

cc: All Counsel

1 DEPONENT'S CHANGES/CORRECTION SHEET AND REASON

2 RE: Roy Nelson, III, et al. v. City of Hayward, et al.

3 Depo: 04.06.18

Ref. #18040621C

4 Note: If you are adding to or deleting from your
 5 testimony, print the exact words you want to add or
 delete. Specify with "Add" or "Delete" and sign below.

6 PAGE LINE Change/Add/Delete

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22 I hereby certify that I have read my deposition
 23 transcript, made those changes and corrections that I
 deem necessary and approve the same as now true and
 correct.

24 DATE: _____ Signature _____

25 LLOYD McKEE

DEPOSITION OF OFFICER LLOYD McKEE

ATTORNEY'S NOTES

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